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No. 284

In the Supreme Court of the United States

OCTOBER TERM, 1942

H. T. OVERSTREET, R. BRAZLE, AND L. L. GARVIN,
PETITIONERS

v.

NORTH SHORE CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL MEMORANDUM ON THE LEGISLATIVE HISTORY AND ADMINISTRATIVE INTERPRETATIONS OF THE COVERAGE OF THE FAIR LABOR STANDARDS ACT, ON BEHALF OF THE ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, AS AMICUS CURIAE

SUPPLEMENTAL MEMORANDUM OF THE LEGISLATIVE HISTORY AND ADMINISTRATIVE INTERPRETATIONS OF THE COVERAGE OF THE FAIR LABOR STANDARDS ACT

The Congressional debates on the final version of the bill demonstrate that the statute was intended to have sweeping reach. The proponents of the legislation in its development through the committees and its management on the floor debated the constitutional issues raised in respect of the legislation from the assumption that a full exercise of the commerce power was involved.[1] However, we have no need to press this point,

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[1] See generally 83 Cong. Rec. 9166–9173. Senator Wagner went so far as to state (83 Cong. Rec. at 9173):

"My prediction is that the same workers whom the courts have held to be in or directly affecting interstate commerce under the National Labor Relations Act will be regarded as subject to the Federal commerce power under the provisions of the bill which we are now considering. Apart from all other theories of jurisdiction, this bill also exercises the constitutional power of Congress to bar unfair goods from the channels of interstate commerce, even where Congress may not regulate directly the employment relations involved."

In response to a question by Senator Bailey, asking whether a cotton mill worker was "in commerce" because his employer shipped goods interstate, Senator Borah, one of the Senate managers who participated in the conference which wrote the bill as enacted, replied:

"If he is working in the production of goods which are being prepared for interstate commerce, and it is part of

and indeed we recognize the conflict between this assumption in the debates and the language changes in the bill itself as items of legislative history. But one thing is clear and that is the one thing of our concern. In considering the scope of the phrase "engaged in commerce," the frame of reference which the committees and the Congress had in mind was at least as broad as that defined by interpretations of that phrase in the decisions of this Court under the Employers' Liability Acts.[8] There is no suggestion that the state tax cases were considered or brought to the attention of the Congress in any discussion of the scope of the phrase "engaged in commerce."

Moreover, from the first committee hearings on the bill to the final debates, even those who took the more restricted view of the federal commerce power—that employees engaged in the manufacture of goods for interstate shipment were beyond the reach of that power—agreed that it embraced those engaged in servicing the instrumentalities

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the system to ship the goods in interstate commerce, the whole transaction is interstate commerce, as was held by the court in the *Jones & Laughlin case*" (83 Cong. Rec. 9167).

Other direct references to the Wagner Act appear at 83 Cong. Rec. 9170 (Senator Lewis); 9172 (Senator Minton).

[8] See 83 Cong. Rec. 7434, 9170–9172; Joint Hearings before the Committee on Education and Labor, United States Senate, and the Committee on Labor, House of Representatives, on S. 2475 and H. R. 7200, 75th Cong., 1st Sess., pp. 43, 59.

of commerce.' And the debates contain pointed evidence that Congress intended in this statute to cover occupations of the kind involved in the instant case. Thus, in urging the bill's passage during the final arguments in the House, one of the members who served on the joint committee which considered the bill, after first carefully pointing out that its final version applied "to interstate business exclusively," specifically cited railroad track maintenance laborers, such as "section and extra gangmen," a class of workers

[1] During the legislative hearings the general counsel for the National Association of Manufacturers, appearing in opposition to the bill, made the following statement (Joint Hearings before the Committee on Education and Labor, United States Senate, and the Committee on Labor, House of Representatives, 75th Cong., 1st Sess., on S. 2475 and H. R. 7200, p. 643):

"I do not believe that Congress, under the commerce power, possesses the power to fix wages and hours, except in the employments which are clearly subject to its authority. I do recognize that there are many employments that are subject to the exercise of the commerce power, as, for instance, those embraced within the Railroad Labor Act, and all instrumentalities of interstate commerce are subject to it. Of course, all public employees are within the jurisdiction of Congress."

The following illuminating colloquy took place between Senator Borah, one of the bill's leading proponents, and Senator Bailey, leader of the unsuccessful constitutional attack against the bill in the Senate, who contended that manufacture was not subject to the commerce power:

"Mr. Borah. But the Senator would not contend that a person working, for instance, in a machine shop of a railroad company, who himself individually was never in the channels of trade, who lived and did his work solely within

strikingly analogous to petitioners, as among those who would benefit. 83 Cong. Rec. 9260, 9262.

Not only does the legislative history of the Act thus support the coverage here urged for the phrase "engaged in commerce," but the established interpretation of that phrase by the Wage and Hour Division includes petitioners in its coverage.[4] This "contemporaneous construction

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the State as a workman in a machine shop, could not be included as a part of the railroad system in regulating the wages and conditions of labor?

"Mr. BAILEY. I may surprise the Senator, but I think I would contend that the entire railroad organization is an instrumentality of commerce between the States and relates to every man wherever he may be and whatever he is doing, providing he is doing something with regard to that system. The instrumentality idea as applied to railroads takes in the whole system, not merely the man who runs the engine or the conductor who manages the car or the brakeman, but the machinist in the shop who never leaves the borders of the State. I think that is the established doctrine.

"Mr. BORAH. But then if we should establish, with reference to any other industry, the fact that the labor was a part of the industrial system, and the industrial system occupied the channels of interstate trade, the doctrine with reference to the man working in the machine shop would apply in that instance; would it not?

"Mr. BAILEY. He is in the whole railroad system that is in itself, as a whole, the instrument of commerce between the States; but the man in the cotton mill is not in any such system" (83 Cong. Rec. 9168–69).

[4] In its Interpretative Bulletin No. 5, issued in November 1939, the Wage and Hour Division stated (at p. 7): "Employees of contractors engaged in maintaining, repairing or reconstructing railroads * * * highways, bridges * * * or other essential instrumentalities of interstate * * *

of * * * [the] * * * statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new" (*Norwegian Nitrogen Co.* v. *United States*, 288 U. S. 294, 315; quoted in *United States* v. *American Trucking Associations*, 310 U. S. 534, 549) is entitled to judicial affirmation.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.

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commerce would seem to be engaged in interstate commerce and subject to the act * * *." In a release of May 15, 1941, also prior to the date on which the present case was begun, the Wage and Hour Division, elaborating on its Bulletin No. 5, held that the Act generally covered "the maintenance, repair and reconstruction of * * * railroad tracks, equipment and facilities; highways; * * * (and) bridges over which interstate commerce more or less regularly travels * * *."

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